

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

RICHARD J. LUCIANO,

Plaintiff,

v.

MUSAB NASSAR,

Defendant.

ORDER

19-CV-3180 (MKB) (LB)

MARGO K. BRODIE, United States District Judge:

Plaintiff Richard J. Luciano, proceeding *pro se*, commenced the above-captioned action on May 22, 2019 against Defendant Mussab Nassar, asserting claims pursuant to 42 U.S.C. § 1983.¹ (Compl., Docket Entry No. 1.) By Order dated July 10, 2019, Magistrate Judge Lois Bloom granted Plaintiff's application to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915, and directed the United States Marshals Services (the "USMS") to serve the summons and Complaint on Defendant without prepayment of fees. (Order dated July 10, 2019, Docket Entry No. 4.) On July 19, 2019, the USMS returned the summons unexecuted, with a note stating: "[The] [b]usiness located at [the] address [provided by Plaintiff] is not the same business that we have to serve. It is Jacobs Construction." (Summons Return filed July 29, 2019, Docket Entry No. 9.) By Order dated December 18, 2019 (the "December 18, 2019 Order"), Judge Bloom directed Plaintiff to provide the proper service address for Defendant on or before January 17, 2020, and warned Plaintiff that if he failed to do so, she would recommend that the Court dismiss

¹ Plaintiff also named Bulldog Process Service, LLC ("Bulldog") as a Defendant. (Compl., Docket Entry No. 1.) By Memorandum and Order dated November 30, 2019, the Court dismissed Plaintiff's claims against Bulldog, and allowed Plaintiff's claims against Nassar to proceed. (Mem. & Order dated Nov. 30, 2019, Docket Entry No. 12.)

the action. (Dec. 18, 2019 Order, Docket Entry No. 14.) Plaintiff never responded to the December 18, 2019 Order. On January 21, 2020, the USMS again returned the summons unexecuted, this time with a note stating: “As per front lobby, suite is empty, they moved out about [four] weeks ago.” (Summons Return filed Jan. 21, 2020, Docket Entry No 15.) By report and recommendation dated April 29, 2020 (the “R&R”), Judge Bloom recommended that the Court dismiss the action pursuant to Rule 4(m) of the Federal Rules of Civil Procedure based on Plaintiff’s failure to provide a proper service address for Defendant. (R&R, Docket Entry No. 16.) No party has objected to the R&R and the time for doing so has passed.

A district court reviewing a magistrate judge’s recommended ruling “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). “Where parties receive clear notice of the consequences, failure to timely object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.” *Smith v. Campbell*, 782 F.3d 93, 102 (2d Cir. 2015) (quoting *Mario v. P&C Food Markets, Inc.*, 313 F. 3d 758, 766 (2d Cir. 2002) (citing *Small v. Sec’y of Health & Human Servs.*, 892 F. 2d 15, 16 (2d Cir. 1989) (per curiam))); *see also Sepe v. N.Y. State Ins. Fund*, 466 F. App’x 49, 50 (2d Cir. 2012) (quoting *United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997)); *see also Almonte v. Suffolk Cty.*, 531 F. App’x 107, 109 (2d Cir. 2013) (“As a rule, a party’s failure to object to any purported error or omission in a magistrate judge’s report waives further judicial review of the point.” (quoting *Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003))); *Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C.*, 596 F.3d 84, 92 (2d Cir. 2010) (“[A] party waives appellate review of a decision in a magistrate judge’s [r]eport and [r]ecommendation if the party fails to file timely objections designating the particular issue.” (citations omitted)).

The Court has reviewed the unopposed R&R and, finding no clear error, adopts the R&R pursuant to 28 U.S.C. § 636(b)(1). Accordingly, the Court dismisses the action pursuant to Rule 4(m) of the Federal Rules of Civil Procedure. The Clerk of Court is directed to close this case and mail a copy of this Order to Plaintiff at the address of record.

Dated: July 8, 2020
Brooklyn, New York

SO ORDERED:

s/ MKB
MARGO K. BRODIE
United States District Judge